

FILED

APR 11 2022

WILLIAM G. CURTIS

Name

05512-027

Prison Number

USP ATWATER

P.O. BOX 019061

ATWATER, CA 95301

Address or Place of Confinement

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

Note: If represented by an attorney, write attorney's name, address & telephone number

United States District Court

EASTERN DISTRICT OF CALIFORNIA

WILLIAM G. CURTIS

Full Name (First, Middle, Last)

Petitioner,

vs.

B. M. TRATE, WARDEN

Name of Warden

(or other authorized person having custody of petitioner)

Respondent.

CASE NO. 1:22-cv-415-BAK (HC)
(to be supplied by the Clerk of the
United States District Court)PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
BY A PERSON IN FEDERAL CUSTODY

RECEIVED

PLEASE COMPLETE THE FOLLOWING (check the appropriate number):

This petition concerns:

1. ☐ a conviction
2. ☒ a sentence
3. ☐ jail or prison conditions
4. ☐ prison discipline
5. ☐ a parole problem
6. ☐ other

CAUTION: If you are attacking a federal conviction,
sentence or judgment, you must
first file a direct appeal or motion under
28 U.S.C. § 2255 in the federal court which
entered judgment.CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

APR 11 2022

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 BY A PERSON IN FEDERAL CUSTODY

Page 1 of 5

PETITION

- (1) Place of detention: VSP ATWATER, P.O. BOX 019001, ATWATER, CA 95301
- (2) Name and location of court which imposed sentence: U.S. DISTRICT COURT, NORTHERN DISTRICT OF INDIANA - HAMMOND DIVISION
- (3) Offense(s) and indictment number(s) (if known) for the sentence imposed: 2:98-CR-78-RL - OFFENSES: CONSPIRACY TO DESTROY CRACK COCAINE; FIREARMS. (18 USC 924(j))
- (4) The date the sentence was imposed and the terms of the sentence: JUNE 1, 2001 - COUNT 1 CONSPIRACY: LIFE; COUNT 2+6-480 MOS. COUNTS 3+4: LIFE; COUNT 7 - 60 MONTHS
- (5) What was your plea (check one): Not guilty ☒ Guilty () Nolo contendere ()
- (6) Kind of trial (check one): Jury ☒ Judge only ()
- (7) Did you appeal from the judgment of conviction or the imposition of sentence: Yes ☒ No ()
- (8) If you did appeal, answer the following for each appeal:

FIRST APPEAL:

Name of court: U.S. COURT OF APPEALS, SEVENTH CIRCUIT

Grounds raised (list each):

- 1) SUFFICIENCY OF EVIDENCE TO SUSTAIN CONVICTIONS
- 2) WHETHER SEPARATE 924(j) CONVICTIONS VIOLATE DOUBLE JEOPARDY

Result/Date of result: MARCH 31, 2003, CONVICTIONS + SENTENCES AFFIRMED

SECOND APPEAL:

Name of court: U.S. SUPREME COURT

Grounds raised (list each):

- 1) SUFFICIENCY OF EVIDENCE TO SUSTAIN CONVICTIONS
- 2) WHETHER SEPARATE 924(j) CONVICTIONS VIOLATE DOUBLE JEOPARDY

Result/Date of result: NOVEMBER 3, 2003 - CERTIORARI DENIED

GROUND FOR THIS 28 U.S.C. § 2241 PETITION

- (9) State *CONCISELY* every ground on which you claim that your sentence is being executed in an illegal manner. Summarize *briefly* the facts supporting each ground

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

OF A MIN CAPITAL, PRE-BIDDER SENTENCE ON COUNTS 3 + 4.

Supporting FACTS for GROUND ONE (tell your story BRIEFLY without citing cases or law).

CAUTION: You must state facts, not conclusions, in support of your grounds. A rule of thumb to follow is -- who did exactly what to violate your rights at what time or place.

AT THE TIME OF MY DIRECT APPEAL IN 2001 AND FIRST 2255 IN 2004, I WAS UNABLE TO MAKE A CLAIM OF ACTUAL INNOCENCE OF A MIN CAPITAL, PRE-BIDDER SENTENCE OF LIFE IMPRISONMENT ON COUNTS 3 + 4 OF THE THIRD SUPERSEDING INDICTMENT, DUE TO THE MANDATORY NATURE AND THEN APPLICATION OF THE SENTENCING GUIDELINES FOR CONSPIRACY UNDER 21 USC 846.

→

GROUND TWO

N/A

Supporting FACTS for GROUND TWO (tell your story BRIEFLY without citing cases or law).

MA

ADMINISTRATIVE APPEALS

- (10) Have you presented the claims raised in Question #9 of this petition to prison officials in a prison administrations appeal?

Yes ()

No ☒

If your answer is no, explain why not: REQUESTING WRIT OF HABEAS CORPUS UNDER "ESCAPE HATCH" OF 28 USC 2255(e).

If your answer is yes, answer the following for each administrative appeal:

FIRST ADMINISTRATIVE APPEAL

Level of appeal:

MA

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

SECOND ADMINISTRATIVE APPEAL

Level of appeal:

MA

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

THIRD ADMINISTRATIVE APPEAL

Level of appeal:

MA

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

FOURTH ADMINISTRATIVE APPEAL

Level of appeal: MA

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

- (11) Is the grievance process completed? Yes () No ()

PREVIOUS PETITIONS

- (12) Have you filed previous petitions for habeas corpus under 28 U.S.C. § 2241 or 28 U.S.C. § 2255, or any other applications, petitions or motions with respect to the claims raised in Question #9 of this petition?

Yes ()

No ☒

- (13) If your answer to Question #12 was yes, give the following information for *each* previous petition:

FIRST PREVIOUS PETITION

Name of court: MA

Nature of proceeding: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

SECOND PREVIOUS PETITION

Name of court: MA

Nature of proceeding: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

- (14) If the claims raised in Question #9 of this petition concern your conviction or sentence, explain why you are filing your petition pursuant to § 2241 instead of § 2255.

AT THE TIME OF MY DIRECT APPEAL IN 2001, AND FIRST 2255
IN 2004, I COULD NOT MAKE A CLAIM OF ACTUAL INNOCENCE OF
A NON-CAPITAL, PDE-BUSHER SENTENCE, BECAUSE U.S. v. BUSHER (2005),
WAS NOT YET DECIDED. THUS, THE LEGAL BASIS FOR MY CLAIM
OF ACTUAL INNOCENCE OF COUNTS 3+4 DID NOT ARISE UNTIL
AFTER THE FILING OF FIRST 2255 MOTION.

- (15) Are you presently represented by counsel?

Yes ()

No ☒

If so, provide your attorney's name, address, and telephone number:

MA

- (16) If you are seeking leave to proceed *in forma pauperis*, have you completed the application setting forth the required information?

Yes ☒

No ()

Note: If your answer is no, you must send a \$5.00 filing fee to the court with your petition.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

April 5, 2022
(Date)

X William Lust
(Signature of Petitioner)

MA
(Signature of Attorney, if any)

TRULINCS 37002066 - JOHNSON, ANTHONY - Unit: ATW-E-B

FROM: 37002066
TO:
SUBJECT: PAGE 1: CURTIS: 2241 HABEAS CORPUS
DATE: 04/05/2022 06:16:12 PM

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM G. CURTIS,
Petitioner,

CIVIL NO.: _____

v.

B. M. TRATE, WARDEN, USP ATWATER,
Respondent.

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
FOR ORDER FROM THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF CALIFORNIA, OR IN THE ALTERNATIVE,
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT,
TO CERTIFY THE INSTANT PETITION AS A TRUE
28 U.S.C. 2241, WRIT OF HABEAS CORPUS, ON A CLAIM OF
ACTUAL INNOCENCE OF A PRE-BOOKER, NON-CAPITAL SENTENCE,
FOR THE PURPOSE OF QUALIFYING FOR THE "ESCAPE HATCH"
OF 28 U.S.C. 2255(e), PURSUANT TO:
ALLEN v. IVES, 950 F.3d 1184 (9th Cir. 2020).

COMES NOW William G. Curtis Petitioner Pro Se, a federal prisoner serving a non-capital sentence at USP Atwater, Atwater, California, and hereby prays and respectfully moves this Honorable Court for certification to file the instant writ of habeas corpus pursuant to 28 U.S.C. 2241, under authority of 28 U.S.C. 2255(e), to resolve the question of whether Petitioner may make a claim of actual innocence of a pre-Booker sentence, based on the following:

I. LIMITED BACKGROUND

On September 17, 1998, a third superseding indictment was returned against Petitioner charging conspiracy to possess with intent to distribute 50 grams or more of crack cocaine (Count 1); Count 2 charged using a person under age of eighteen in the conspiracy; Counts 3 & 4 charged charged use and carry of a firearm under 18 U.S.C.924(j); Count 6 charged possession with intent to distribute 5 grams or more of cocaine; Count 7 charged carrying a firearm with intent to distribute crack cocaine.

Although Petitioner was eligible for the death penalty on Counts 3 & 4, the 924(j) counts, the Attorney General did not authorize seeking the death penalty in this case. Thus, Petitioner received a non-capital sentence.

After conviction via jury trial, on June 1, 2001, Petitioner was sentenced to life imprisonment on Count 1, to be served concurrently with 480 months sentences on Counts 2 and 6. He also received a non-capital sentence of life

TRULINCS 37002066 - JOHNSON, ANTHONY - Unit: ATW-E-B

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imprisonment on Counts 3 and 4 and 60 months imprisonment on Count 7, each sentence to be consecutive to all other sentences.

Petitioner appealed his convictions to the U.S. Court of Appeals for the Seventh Circuit. That court affirmed the convictions and sentences in a published opinion on March 31, 2003. See, *United States v. Curtis*, 324 F.3d 501 (7th Cir. 2003). Subsequently, the Supreme Court denied Petitioner's petition for writ of certiorari on November 3, 2003. See, *Curtis v. United States*, 124 S.Ct. 505 (2003).

On October 21, 2004, Petitioner filed a timely motion pursuant to 28 U.S.C. 2255, raising a number of claims, including ineffective assistance of counsel, and a Blakely claim.

On January 5, 2006, the U.S. District Court, Northern District of Indiana, Hammond Division, denied the writ.

On August 18, 2021, the N.D. Indiana Court GRANTED Petitioner's motion for reduction in sentence, with respect to Counts 1, 2, and 6, the eligible crack cocaine sentences, pursuant to Section 404 of First Step Act of 2018, and imposed a 293-month term of imprisonment on those counts to be run concurrently. Counts 3 & 5, the non-capital sentences of life imprisonment were not reduced.

The instant motion on the question whether Petitioner can be actually innocent of a noncapital pre-Booker sentence, (with respect to Counts 3 & 4) now ensues.

II. JURISDICTION

Petitioner is seeking certification to proceed with the instant 2241 petition on a claim of whether a petitioner can ever be actually innocent of a noncapital, pre-Booker sentence, based on the law of this circuit. See, *Allen v. Ives*, 950 F.3d 1184 (9th Cir. 2020)(Petitioner may make a claim of actual innocence of a pre-Booker sentence). The record in this case establishes that the legal basis for Petitioner's actual innocence claim did not arise until after Petitioner's first 2255 motion. See, *Harrison v. Ollison*, 519 F.3d 952, 960 (9th Cir. 2008)("In determining whether a petitioner had an obstructed procedural shot to pursue his claim,...we consider: (1) whether the legal basis for petitioner's claim 'did not arise until after he had exhausted his direct appeal and first 2255 motion;' and (2) whether the law changed 'in any way relevant' to petitioner's claim after that first 2255 motion."). (citation omitted).

TRULINCS 37002066 - JOHNSON, ANTHONY - Unit: ATW-E-B

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SUBJECT: PAGE 3: CURTIS: 2241 HABEAS CORPUS
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III. ISSUE FOR CERTIFICATION

The sole issue presented for certification as a true 28 U.S.C. 2242 petition is:

"WHETHER PETITIONER CAN EVER BE ACTUALLY INNOCENT OF A NONCAPITAL, PRE-BOOKER SENTENCE FOR THE PURPOSE OF QUALIFYING FOR THE 'ESCAPE HATCH' OF 28 U.S.C. 2255(e)?"

Petitioner submits, on June 1, 2001, he was sentenced to a term of imprisonment on a pre-Booker sentence. Subsequently, Petitioner appealed his convictions to the U.S. Court of Appeals for the Seventh Circuit, with certiorari denied on November 3, 2003. See, *Curtis v. United States*, 124 S.Ct. 505 (2003). On October 1, 2004, Petitioner timely filed a motion pursuant to 2255. Thus, Petitioner could not make a claim of actual innocence of a pre-Booker sentence with respect to Counts 3 & 4 because the actual innocence claim did not arise until after Petitioner's first 2255 motion.

Also, on August 18, 2021, the U.S. District Court for the Northern District of Indiana did not interrupt the sentences imposed on Counts 3 & 4 at the time the Court granted a reduction in sentence with respect to Counts, 1, 2 and 6, under authority of The First Step Act of 2018, notwithstanding the law of the Seventh Circuit which allowed a Court to consider sentencing changes in sentencing law when evaluating 18 U.S.C. 3553(a) factors. See, e.g., *United States v. Black*, 999 F.3d 1071, 1075 (7th Cir. 2021)(court may consider sentencing changes in sentencing law when evaluating 3553(a) factors).

In this case, the Northern District of Indiana Court could have considered the fact Petitioner is actually innocent of a pre-Booker, noncapital sentence with respect to Counts 3 & 4 because the conviction of conspiracy with respect to Count 1 (21 U.S.C. 846), the underlying offense for the firearms charges, does not require proof of an overt act, and therefore, Petitioner is actually innocent of those offenses as conspiracy to commit a drug trafficking offense DOES NOT require proof of an overt act. See, *United States v. Crooks*, No. 20-1025 (10th Cir. May 18, 2021)(Case in First Step Act context where Tenth Circuit ruled that district court legally erred by find that Crooks was ineligible for relief committing a conspiracy under 21 U.S.C. 846, and REVERSED and REMANDED).

IV. CONCLUSION

WHEREFORE, William G. Curtis Petitioner Pro Se, hereby prays and respectfully moves this Honorable Court to certify the instant petition as a true 28 U.S.C. 2241 petition, pursuant to 28 U.S.C. 2255(e), on a claim of actual innocence of a pre-Booker, noncapital sentence under authority of *Allen v. Ives*.

Done this 5th day of April, 2022.

TRULINCS 37002066 - JOHNSON, ANTHONY - Unit: ATW-E-B

FROM: 37002066
TO:
SUBJECT: PAGE 4: CURTIS: 2241: HABEAS CORPUS
DATE: 04/05/2022 02:53:10 PM

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CERTIFICATE OF SERVICE

I, William G. Curtis Petitioner Pro Se, hereby certify that I have served a true and correct copy of the following:

"PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241"

Which is deemed filed at the time it was delivered to prison authorities for forwarding, *Houston v. Lack*, 101 L.Ed.2d 245 (1988), upon the defendant/defendants and his attorney/attorneys of record, by placing same in a sealed, postage paid envelope addressed to:

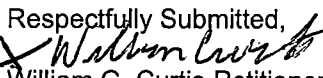
CLERK OF THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
2500 TULARE STREET, ROOM 1501
FRESNO, CA 93721

and deposited same in the United States Mail at: USP Atwater, P.O. Box 019001, Atwater, CA 95301.

I declare under penalty of perjury (Title 28 U.S.C. 1746), that the foregoing is true and correct.

Dated this 5th day of April, 2022.

Respectfully Submitted,


William G. Curtis-Petitioner Pro Se
Reg. No. 05512-027
USP Atwater
P.O. Box 019001
Atwater, CA 95301